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STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

City of Columbia, Illinois

-vs-

Illinois-American Water Company

Complaint as to providing services
outside of the utility's certificated
service area outside Columbia, Illinois

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Docket No. 00-0679

BRIEF OF ILLINOIS-AMERICAN WATER COMPANY

Respondent, Illinois-American Water Company, submits this brief pursuant to 83 Ill. Admin. Code 200.800, in response to the request of the hearing examiner for the respective positions of the parties regarding the Complaint as to providing services outside the utility's certificated service area outside Columbia, Illinois.

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PROCEDURAL HISTORY

On October 19, 2000, the City of Columbia (Columbia) filed its complaint against Illinois-American Water Company (Illinois-American) with the Illinois Commerce Commission (ICC). In its complaint, Columbia alleges that Illinois-American violated the Illinois Public Utilities Act when it provided service to three customers who live outside the area covered by the Certificate of Public Convenience and Necessity issued by the ICC in ICC Docket Number 96-0353 to Illinois-American. On November 13, 2000, Illinois-American filed its answer and denied that it violated the Illinois Public Utilities Act as the service connection is within Illinois-American's certificated area and the customers' service lines do not cross property owned by any other person.

Columbia filed prepared testimony in this docket on December 8, 2000 and filed rebuttal and sur-rebuttal testimony on February 5, 2001. Illinois-American filed prepared testimony on December 12, 2000, rebuttal testimony on January 2, 2001 and sur-rebuttal testimony on March 6, 2001.

Pursuant to proper legal notice, a hearing was held in this matter before a duly authorized Hearing Examiner of the Commission at its offices in Springfield, Illinois, on March 15, 2001. Appearances were entered by counsel on behalf of Columbia and Illinois-American. Counsel for the Public Utilities Division of the Commission (collectively, "Staff") also appeared. Columbia and Illinois-American presented evidence. At the conclusion of the hearing, the record was marked "heard and taken".

STATEMENT OF FACTS

In Docket No. 96-0353, the ICC granted Illinois-American a certificate of public convenience and necessity to provide water service to and including the north right-of-way line of Illinois State Route 158. (See IAWC/Columbia's Joint Exhibit 1) Illinois-American has an existing 12-inch water main on the south side of Illinois State Route 158 between Quarry Road and Centerville Road. (Jt. Ex. 1)

Three residential water customers who desire service reside on the north side of Illinois State Route 158 between Quarry Road and Centerville Road. (Jt. Ex. 1). These properties abut the right-of-way of Illinois State Route 158. (Jt. Ex. 1) Illinois-American has bored residential service lines off of its 12-inch water main on the south side of Illinois State Route 158 to provide service to two of these residences, being the John Dawson residence, located at 625 State Route 158; and the Byron Boyle residence located at 631 State Route 158. (Jt. Ex. 1) The Barbara Fulford residence at 607 State Route 158 has not yet applied for service. (IAWC's Ex. 1, p. 2, lines 16-18) The service connections for the Dawson residence and the Boyle residence are within Illinois-American's certificated area. (Jt. Ex. 1) The physical residences of the John Dawson family and Byron Boyle family are located outside of the area certificated to Illinois-American. (Jt. Ex. 1) The service lines owned by the John Dawson family and the Byron Boyle family do not cross property owned by any other party. (Jt. Ex. 1)

The cost for Illinois-American to provide service to the John Dawson residence was \$2,335.69. (IAWC's Ex. 1, p. 3, line 19) The cost to provide service to the Boyle residence was \$1,778.48. (Tr. pp. 88-89) The estimated costs for Illinois-

American to provide service to the Fulford residence in a fashion similar to that utilized to provide service to the Dawson and Boyle residences would be \$1,778.48. (Tr. p. 90)

Columbia has proposed installation of facilities which could provide service to the three residences in question. (Col. Ex. 1, pp. 1-3) Columbia has obtained an IEPA construction permit for its proposed facilities. (Tr. pp. 71-72) The costs for Columbia to install the facilities it proposes is estimated by Columbia to range between \$9,287 and \$15,481¹, depending upon whether City labor is utilized or an outside contractor is engaged. (Tr. 31-33) The completion of the facilities to service these three customers is dependent upon Columbia completing phase two of its water facility construction plan. (Tr. p. 34) The estimated costs of constructing phase two of Columbia's plan are \$40,000. (Tr. pp. 34-35) Columbia has not started construction on any phase of its construction plan. (Tr. p. 39) Columbia estimates that it could install the proposed facilities within six months, assuming it is able to obtain necessary easements. (Col. Ex. 1, p. 3)

At the hearing, Columbia raised a concern regarding fire protection service. (Tr. pp. 47-48) Illinois-American has a 12-inch water main providing service to these customers. (Jt. Ex. 1) Columbia's water facility construction plans call for a 6-inch water main. (Tr. pp. 48-49, 75) If Columbia completes phase two of its water facility construction plans, there would be fire hydrants available within 400 feet of the three customers. (Tr. pp. 48, 67, 71) These three customers are not in the city limits and are not currently served by the City's fire department. (Tr. p. 63) Service could be provided by the Company off of its 12-inch water main through the rural fire district for the

¹ The testimony presented by Columbia regarding its costs was unclear. At one point the stated costs were \$9,287 to \$15,481 and then later stated to be \$8,290 to \$13,818. (Tr. pp. 31-33)

Columbia area. In fact, this is the same fire protection operation as the City uses.² Columbia admits that fire service would be better from a 12-inch water main. (Tr. p. 75)

Originally, Columbia asserted that Illinois-American should not be entitled to recover its stranded costs. (Col. Ex. 2, p. 3-4) At the hearing, Columbia admitted that it would be less expensive for Columbia to use Illinois-American's facilities rather than constructing its own facilities. (Tr. pp. 46-47, 70-71) The testimony regarding Columbia's new position was not clear whether it would take Illinois-American's facilities or whether it would take service through the facilities. (Tr. pp. 47-58, 70-71) Columbia argued that the ICC should rule that Illinois-American could not provide service to the three customers whose physical residences are outside Illinois-American's certificated area but that Columbia should take over service to the three customers by using Illinois-American's facilities at a wholesale rate and Columbia would bill the customers. (Tr. pp. 50-60) The MEMJAWA wholesale agreement does not contemplate this connection. (A copy of the MEMJAWA agreement is attached as Exhibit A) Columbia indicated that it intends to abandon the connection with Illinois-American after Columbia's water system construction was completed. (Tr. pp. 48-50, 57-62)

² Mayor Schneider testified on behalf of Columbia that Columbia has a joint rural/city fire department which shares the same trucks and fire personnel. (Tr. p. 63)

ARGUMENT

1. Illinois-American Has Not Violated The Public Utilities Act By Providing Service To The Boyle And Dawson Residences.

Illinois-American submits that the evidence presented at the hearing establishes that Illinois-American has not violated the Public Utilities Act by providing service to the customers in question. The need for water service to the customers is supported by the requests by the customers for service. In addition, the City of Columbia has acknowledged the need for water service through its own proposal to provide service to the subject customers.

In Docket No. 96-0353, Illinois-American obtained a Certificate of Public Necessity and Convenience. The area covered pursuant to the Certificate is depicted in the map attached to Illinois-American's Exhibit 1 as Exhibit KHC-1. The certificated area includes the north right-of-way line of Illinois State Route 158. (Jt. Ex. 1) The three residential water customers at issue in this complaint reside on the north side of Illinois State Route 158 between Quarry Road and Centreville Road. (Jt. Ex. 1). These properties abut the right-of-way of Illinois State Route 158. (Jt. Ex. 1)

The John Dawson residence located at 625 State Route 158 and the Byron Boyle residence located at 631 State Route 158 applied for water service. (IAWC Ex. 2) At the time of their application and to the present time, Illinois-American is the only water service purveyor available to provide service to these customers. (Col. Ex. 1) On August 21, 2000, the facilities which serve the Dawson property were installed. (IAWC Ex. 3). The facilities serving the Boyle residence were installed after written testimony was

submitted to the ICC. (Tr. p. 82). The connection point and metering point for the customers at issue are within Illinois-American's certificated area. (Jt. Ex. 1) The customers' service lines do not cross property owned by any other person and so are in compliance with 83 Ill. Admin. Code 600.370(c)(2) (Jt. Ex. 1)

Within the certificated area, Illinois-American can provide service and sell water to its retail customers. (See Docket No. 96-0353) The law is clear that a "sale" occurs at the point of delivery. *Kates Holding Co., Inc. v. Commissioner of the Internal Revenue*, 79 T.C. 700, Tax Ct. Rep. (CCH) 39,460 (1982); *Superior Coal Co. v. Department of Revenue*, 4 Ill. 2d 459, 123 N.E.2d 713 (1954); *Department of Revenue v. Jennison-Wright Corp.*, 393 Ill. 401, 66 N.E.2d 395 (1946). The point of delivery or "sale" for water customers is at the point of the connection between the customer's service line and the main which is where the meter is located. (LAWC Ex. 3, p. 2) The water meter measures the "sales" to the customer. (Tr. p. 86-87) The fact that the ultimate use will occur outside the certificated area should have no bearing on whether the sale occurs within the certificated area. *Superior Oil Co. v. Mississippi*, 280 U.S. 390, 50 S. Ct. 169 (1930); *Pressed Steel Car Co., Inc. v. Lyons*, 7 Ill. 2d 95, 129 N.E.2d 765 (1955); *Moffat Coal Co. v. Daley*, 405 Ill. 14, 89 N.E.2d 892 (1950); *Superior Coal Co. v. Department of Finance*, 377 Ill. 282, 36 N.E.2d 354 (1941). So long as the customer's service line does not cross property owned by another person, the service is in compliance with the requirement applicable to water utilities, as set forth in 83 Ill. Admin. Code 600.370(c)(2). The connection and metering for these two customers are within Illinois-American's certificated area; and the customers' service lines do not cross property owned by another person. (Jt. Ex. 1)

This manner of providing service is industry practice. Illinois-American provides service in this fashion to other retail customers (Tr. pp. 91-92) and to wholesale customers, including Columbia itself. (IAWC Ex. 1, p. 3; IAWC Ex. 3, pp. 3-4) Other water utilities also provide service in this manner. (See Ex. KHC-2 of IAWC's Ex. 1, copy of ICC Order and Certificate of Public Convenience and Necessity No. 55454) In Docket No. 55454, Citizens Utilities Company of Illinois (Citizens) received an application for service from developers of a Holiday Inn. Citizens was certificated to serve an adjacent area and had capacity to provide services to the Holiday Inn. The developers constructed their lines to connect with Citizens' lines within Citizen's certificated area. Thereafter, Citizens sought a Certificate of Public Convenience and Necessity that encompassed the area adjacent to the Holiday Inn and other adjoining property. The ICC granted the certificate to Citizens over a competitor's objection and without comment as to the prior manner of service.

In contrast to Illinois-American, Columbia does not have the current ability to provide adequate, reliable, and efficient water service to the subject customers. Before Columbia could provide service, it would need to construct phase 2 as well as phase 3 to its distribution system. (Tr. p 34) Columbia presented evidence that it could complete the construction within six months. (Col. Ex. 1, p. 3) However, prior to construction, Columbia would have to obtain at least six easements. (Col. Ex. 1, p. 3)

Illinois-American's service is the least-cost means of providing service to these customers. Illinois-American's costs of providing service to the Dawson residence were \$2,335.69 and to the Boyle residence was \$1,778.48. (IAWC Ex. 1, p. 3, Tr. pp. 88-89) If the Fulfords submitted an application for service, the costs to provide them service

would also be approximately \$1,778.48. (Tr. p. 90) The total costs to Illinois-American for providing the service for these three families would be \$5,892.65. The City of Columbia estimates that its costs to install its proposed facilities is between \$9,287.00 and \$15,481.00, depending on whether City labor is utilized or an outside contractor is engaged. (Tr. pp. 31-33) The City's estimated costs are also dependent upon the completion of phase 2 of its water facility construction, which would cost an additional \$40,000.00 to complete. (Tr. pp. 34-35)

Based on the foregoing, the ICC should determine that Illinois-American has not violated the Public Utilities Act by providing service to the two customers. Sales to the customers occur within the certificated area of Illinois-American. Illinois-American is the only purveyor presently available to provide service to these customers, and Illinois-American's service is the least-cost means of providing service.

2. Illinois-American Can Provide Superior Fire Protection Service To These Customers.

Illinois-American is providing service to these customers off a 12-inch water main. (Jt. Ex. 1) Illinois-American could provide fire protection service to these customers from this same 12-inch water main, should the fire district having jurisdiction so request.

These customers are not in the city limits of Columbia and are not currently served by the Columbia City Fire Department. (Tr. p. 63) In order for Columbia to be physically able to provide fire protection service, phase two of Columbia's water facility construction plan would need to be completed. (Tr. pp. 48, 67, 71) Columbia's plan

provides for a 6-inch water main. (Tr. pp. 48-49, 75) Columbia concedes that fire protection would be better from a 12-inch water main. (Tr. p. 75)

Illinois-American can provide fire protection service sooner than Columbia could and from a larger main. Therefore, Illinois-American can provide superior fire protection service.

3. If The Commission Rules In Favor Of Columbia, Illinois-American Should Be Allowed To Recover Its Stranded Costs.

It is Illinois-American's position that it has not violated the Public Utilities Act by providing service to these customers. If the Commission determines that Illinois-American cannot provide service to these customers in this fashion and that Illinois-American must cease service, then Illinois-American should be allowed to recover its stranded costs. When the need for service arose, Illinois-American was the only entity available to provide service to these customers. The earliest that the City would be in a position to provide service to these customers would be within three to four months. (Tr. pp. 73-74) The only way that Columbia can immediately provide service to these customers would be to use Illinois-American's facilities. Should Illinois-American be ordered to cease service and Columbia desire to utilize Illinois-American's facilities, Columbia should be required to pay Illinois-American its non-depreciated costs for such facilities. Should Columbia wish to take service through such facilities, it should be required to pay the general tariff rates for such service. Although Columbia argued that it should take over service to these customers by using the MEMJAWA wholesale agreement, the wholesale agreement does not contemplate such service.

The exact amount of costs stranded would depend on when the Company would be ordered to discontinue service. (IAWC Ex. 1, p. 4) Five percent of the cost to provide service is recovered each year. (IAWC Ex. 1, p. 4) Therefore, if the Company is ordered to discontinue service one year from the date the service was initiated, 95% of the installation costs would be stranded. (IAWC Ex. 1, p. 4)

4. Illinois-American Will Seek A Temporary Certificate Of Public Convenience And Necessity If The Commission Determines That Illinois-American Cannot Provide Service In This Manner.

In Columbia's Complaint, as well as its written testimony, Columbia took the position that it would not pay Illinois-American's stranded costs and would seek to provide service to the three subject customers. In response, Illinois-American testified that if the Commission determined that Illinois-American cannot provide service in this manner to these customers, it would seek a temporary Certificate of Public Convenience and Necessity to provide the service. (IAWC Ex. 3, p. 6) However, during the hearing on March 15, 2001, the City changed its position regarding the stranded costs. (Tr. pp. 46-47) In response, Illinois-American was asked to clarify its position on whether it would seek a temporary Certificate of Public Convenience and Necessity if Columbia agreed to purchase the Company's service lines. (Tr. pp. 97-98) In this case, the Company would still seek a temporary Certificate of Public Convenience and Necessity, as it believes that would be in the customers' best interest to allow the customer to continue service with its purveyor of choice. The City has not indicated what, if anything, it is willing to pay Illinois-American for its stranded costs. In addition, Columbia has indicated that it would attempt to purchase the water service at a wholesale rate rather than the retail rate. This would unfairly burden Illinois-American's other

customers. Thus, Illinois-American would seek a temporary Certificate of Public Convenience and Necessity if the ICC determines that Illinois-American cannot provide service to these customers in the manner currently being utilized.

CONCLUSION

Illinois-American has not violated the Public Utilities Act. The service connections are within its certificated area, and the customers' service lines do not cross property owned by any other person. Thus service is in conformance with 83 Ill. Admin. Code 600.370. Illinois-American is the only purveyor currently able to provide the service and its service is the least-cost means of providing service to these customers. Based on the evidence, the Commission should rule in favor of Illinois-American and against the City of Columbia on the issue of whether Illinois-American has violated the Illinois Public Utilities Act.

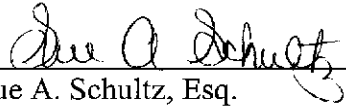
Assuming that the Commission determines that Illinois-American cannot provide service to these customers in this manner, Illinois-American should be allowed to recover its stranded costs. If the Commission determines that the City of Columbia is to provide service, Columbia should repay Illinois-American its stranded costs. If Columbia would then desire to utilize Illinois-American's facilities as its service facilities, Columbia should be required to pay the general tariff rate for service.

Should the Commission determine that Illinois-American cannot provide service to these customers in the present manner, Illinois-American reserves the right to seek a

temporary Certificate of Public Convenience and Necessity to provide services to these customers.

Respectfully submitted,

ILLINOIS-AMERICAN WATER COMPANY

By: 

Sue A. Schultz, Esq.
300 N. Water Works Dr.
P.O. Box 24040
Belleville, IL 62223-9040
(618) 236-1180
Fax (618) 236-1186
email: sschultz@illinoisamerican.com

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ILLINOIS COMMERCE COMMISSION**

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service area outside Columbia, Illinois)	

CERTIFICATE OF SERVICE

I, Sue A. Schultz, do hereby certify that a copy of the attached Brief of Illinois-American Water Company has been served upon each of the following, via electronic mail and overnight mail delivery, this 12th day of April, 2001:

William Showtis, Hearing Examiner
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, IL 62701
wshowtis@icc.state.il.us

Tom D. Adams, Esq.
Adams and Huetsch
321 Wedgewood Square
P. O. Box 647
Columbia, IL 62236
tdadams@htc.net

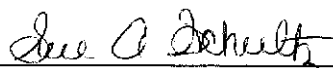
Roy A. King
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, IL 62701
rking@icc.state.il.us

Joseph T. Clennon
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, IL 62701
jclennon@icc.state.il.us

Janice E. Von Qualen
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, IL 62701
jvonqual@icc.state.il.us

Respectfully submitted,

ILLINOIS-AMERICAN WATER COMPANY

By: 
Sue A. Schultz, General Counsel
P. O. Box 24040
300 N. Water Works Drive
Belleville, Illinois 62223-9040
618-239-2225
email: sschultz@illinoisamerican.com